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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/640,822	08/17/2000	Heinrich Gers-Barlag	Bei 637- KGB	6834

7590 03/09/2004  
Norris McLaughlin & Marcus PA  
220 East 42nd Street  
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New York, PA 10017

EXAMINER

WELLS, LAUREN Q

ART UNIT PAPER NUMBER

1617

DATE MAILED: 03/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/640,822

Applicant(s)

GERS-BARIAG ET AL.

Examiner

Lauren Q Wells

Art Unit

1617

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 25 February 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a)  The period for reply expires 3 months from the mailing date of the final rejection.  
b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1.  A Notice of Appeal was filed on 25 February 2004. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.  
2.  The proposed amendment(s) will not be entered because:  
(a)  they raise new issues that would require further consideration and/or search (see NOTE below);  
(b)  they raise the issue of new matter (see Note below);  
(c)  they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d)  they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3.  Applicant's reply has overcome the following rejection(s): See Continuation Sheet.  
4.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
5.  The a)  affidavit, b)  exhibit, or c)  request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.  
6.  The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.  
7.  For purposes of Appeal, the proposed amendment(s) a)  will not be entered or b)  will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 14-3!

Claim(s) withdrawn from consideration: \_\_\_\_\_

8.  The drawing correction filed on \_\_\_\_\_ is a)  approved or b)  disapproved by the Examiner.  
9.  Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_  
10.  Other: \_\_\_\_\_

  
**SREENI PADMANABHAN**  
SUPERVISORY PATENT EXAMINER

Continuation of 3. Applicant's reply has overcome the following rejection(s): the Double Patenting Rejections over Application Number 09/641,013 and Patent Number 6,592,883..

Continuation of 5. does NOT place the application in condition for allowance because: a) the 35USC103 rejections are maintained for reasons of record in the Office Action mailed 11/25/03; b) Applicant argues that the Examples of Fanger et al. do not exemplify the instant claims. This argument is not persuasive, as the teachings of a reference are not limited to examples/preferred embodiments, but are considered as a whole for what they teach/make obvious to one of ordinary skill in the art; b) Applicant argues that "what is also missing from Fanger et al. is a teaching or suggestion for the remaining five elements to be used in combination with each other". This argument is not persuasive. In Col. 2, lines 33-34, Fanger et al. specifically teaches water-in-oil lipodispersions, wherein lipodispersions do not contain emulsifiers and wherein lipodispersions are finely disperse, as being the subject matter of their invention. Specifically exemplified forms of the invention are stick preparations and Col. 3, lines 9-11, teach that the invention is directed toward stick formations. And in Col 9, aluminum silicates (phyllosilicate pigment particles) are taught as gelling agents for use in the invention. Thus, there is no impermissible picking and choosing from the teachings of Fanger et al. Applicant argues, "there is no indication that such an addition would be appropriate for combination with the hydrophilic starch esterified with one or more n-octenylsuccinate radical of Fanger et al.'s invention". This argument is not persuasive. Msika et al. is merely relied upon to teach the preferred modified phyllosilicate pigment particles, wherein it is obvious to substitute one known gelling agent for another for cosmetic water-in-oil emulsions.